121

(2)

No. 08-947

FILED
FEB 27 2009
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

THE BANDER FAMILY PARTNERSHIP, L.P.,
Petitioner,

v.

TOWERHILL WEALTH MANAGEMENT, LLC,
TOWERHILL US EQUITIES, LLC,
TOWERHILL INTERNATIONAL EQUITIES, LLC
and TOWERHILL LONG/SHORT EQUITY, LLC,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF IN OPPOSITION FOR RESPONDENTS

RICHARD I.G. JONES
Of Counsel

ASHBY & GEDDES
500 Delaware Avenue
8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888

MARK G. ARNOLD
Counsel of Record

HARRY B. WILSON
R. PRESCOTT SIFTON, JR.
Of Counsel

HUSCH BLACKWELL
SANDERS LLP
The Plaza in Clayton
Office Tower
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105
(314) 480-1500

Counsel for Respondents

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
FACTUAL BACKGROUND	1
REASONS WHY THE PETITION SHOULD BE DENIED	5
I. THIS IS THE WRONG CASE TO DECIDE WHETHER CONGRESS REQUIRED STATES TO ACCEPT INTERLOCUTORY APPEALS IN ARBITRATION MATTERS	5
A. Petitioner's Appeal Is Frivolous on the Merits	5
B. Petitioner Did Not Properly Present Its Argument to the Delaware Supreme Court and that Court Did Not Address It	7
II. PETITIONER HAS GREATLY EXAGGERATED THE ALLEGED CONFLICT BETWEEN THE VARIOUS STATE COURTS	9
CONCLUSION	15
SUPPLEMENTAL APPENDIX	
APPENDIX A	
ARTICLE I ORGANIZATION	1a
ARTICLE II REPRESENTATIONS AND WARRANTIES	5a
ARTICLE III CAPITAL	8a
ARTICLE IV INTERESTS AND CAPITAL ACCOUNTS	9a

TABLE OF CONTENTS—Continued

	Page
ARTICLE V ALLOCATIONS	13a
ARTICLE VI REDEMPTION OF INTERESTS	15a
ARTICLE VII OPERATIONS	18a
ARTICLE VIII ACCOUNTING	22a
ARTICLE IX TRANSFERS	25a
ARTICLE X DISSOLUTION, LIQUIDATION AND TERMINATION OF COMPANY	26a
ARTICLE XI INDEMNIFICATION AND LIABILITY	29a
ARTICLE XII MISCELLANEOUS	30a
APPENDIX B	36a

TABLE OF AUTHORITIES

CASES	Page
A.G. Edwards & Sons, Inc. v. Clark, 558 So.2d 358 (Ala. 1990)	10
Board of Directors of Rotary Int'l v. Rotary Club of Durate, 481 U.S. 537 (1987)	8
Communist Party of the U.S. v. Subversive Activities Control Board, 367 U.S. 1 (1967)	9
Dakota Wesleyan Univ. v. HPG Int'l, Inc., 560 N.W.2d 921 (S.D. 1977)	10
Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863 (1994)	11
Dyre Law Firm, PLLC v. Bradley, 874 So.2d 984 (Miss.), *cert. denied*, 543 U.S. 1000 (2004)	10
First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995)	11
Green Tree Financial Corp. v. Randolph, 531 U.S. 79 (2000)	11
Gregory v. Ashcroft, 501 U.S. 452 (1991)	11, 14
Howell v. Mississippi, 543 U.S. 440 (2005)	8
Lawrence v. Beverly Manor, 2009 WL 77879 (Mo. banc Jan. 13, 2009)	10
Mertens v. Hewitt Associates, 508 U.S. 248 (1993)	13
Murphy v. State, 632 A.2d 1150 (Del. 1993)	9
Riscorp, Inc. v. Occupational Safety Ass'n of Ala. Workmen's Comp. Fund, 796 So.2d 1062 (Ala. 2000)	10
Turnbull v. Fink, 644 A.2d 1322 (Del. 1994)	9
Turner Broadcasting System v. FCC, 520 U.S. 180 (1997)	9

TABLE OF AUTHORITIES—Continued

Page

Webb v. Webb, 451 U.S. 493 (1981)..... 8

STATUTES

9 U.S.C. § 3 12
9 U.S.C. § 4 13
9 U.S.C. § 16(a)(1) 12
9 U.S.C. § 16(a)(2) 4, 7, 8, 12, 14
9 U.S.C. § 203 13
9 U.S.C. § 206 13
28 U.S.C. § 1292(b)..... 13

IN THE

Supreme Court of the United States

No. 08-947

THE BANDER FAMILY PARTNERSHIP, L.P.,
Petitioner,

v.

TOWERHILL WEALTH MANAGEMENT, LLC,
TOWERHILL US EQUITIES, LLC,
TOWERHILL INTERNATIONAL EQUITIES, LLC
and TOWERHILL LONG/SHORT EQUITY, LLC,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF IN OPPOSITION FOR RESPONDENTS

FACTUAL BACKGROUND

In 2005, Petitioner invested money in three limited liability companies (LLCs) managed by Respondents. In connection with this investment, the parties executed three sets of contracts: an investment advisory agreement; the LLC operating agreements; and subscription agreements. Only the first two are relevant to this Petition.

The investment advisory agreement contained a Missouri choice of law provision and, in ¶ 17, a dispute resolution clause requiring binding arbitra-

tion under the Rules of the American Arbitration Association ("AAA"). App. 111a.

The LLC operating agreements (which Petitioner omitted from the appendix) contained a Delaware choice of law provision and an agreement to "submit to the jurisdiction of the Court of Chancery of the State of Delaware for resolution of any disputes." A copy of one of the LLC operating agreements, for CPW International Equities, LLC, now known as TowerHill International Equities, LLC, is included in Respondents' Supplemental Appendix. The provisions of the three LLC operating agreements relevant to this Petition are the same. Supp. App. 32a. The LLC operating agreements also provided for "non-binding arbitration or mediation." Supp. App. 32a.

At the end of 2007, Petitioner exercised its right pursuant to Article VI of the LLC operating agreements to redeem its interest in each LLC. The LLC operating agreements were the only agreements to confer redemption rights on Petitioner. The investment advisory agreement does not even mention the word.

The LLC operating agreements required each LLC to remit 90% of the value of Petitioner's interest within 30 business days after the Valuation Date. Supp. App. 16a. They required each LLC to remit the balance after an audit but "net of expenses to the Company incurred by the Company in connection with such redemption." Supp. App. 16a. Section 7.5 of each LLC operating agreement defined "expenses" to include "all other fees," including "legal fees." Supp. App. 21a.

In early 2008, Petitioner took the position that it was entitled to interest on the value of its redeemed

interests from the Valuation Date until paid, although § 3.4 of the LLC operating agreements provides that no member shall be entitled "to receive interest . . . except as expressly provided in this Agreement." Supp. App. 9a. Nothing in the LLC operating agreements provides for payment of interest on the value of redeemed interests.

Efforts to resolve the dispute were fruitless. On June 2, 2008, Petitioner filed a demand for arbitration with the AAA. App. 122a. The demand purported to rest on ¶ 17 of the investment advisory agreement. App. 127a. The substance of the demand, however, related entirely to the redemption. Thus, the demand stated that Petitioner had given written notice of its intent to "redeem its interest in each Investment LLC" effective December 31, 2007. App. 132a. The gravamen of the complaint was that Respondents had failed to pay "the remaining 10% of the reported Redemption Value," to account for "the handling and use" of the "cash held to pay the Redemption Value," and to pay interest on "the Redemption Value." App. 135a-137a ¶¶ 30; 32; 34.

In response to this demand, Respondents filed the underlying lawsuit in the forum agreed to by the parties in the LLC operating agreements, the Delaware Court of Chancery. The lawsuit sought injunctive relief to prevent Petitioner from proceeding with the arbitration and a declaratory judgment that Respondents had paid everything that the LLC operating agreements required.

At the conclusion of the hearing on Respondents' motion for preliminary injunction, the Court of Chancery made oral findings of fact. On no less than five occasions, the Vice Chancellor found that the substance of Petitioner's demand concerned the LLC

operating agreements, not the investment advisory agreement. App. 51a; 56a; 57a; 59a; 64a. As a result, the trial court granted the requested injunctive relief.

Petitioner filed an application for certification of interlocutory appeal. App. 78a. This application continued to assert that the arbitration clause in the investment advisory agreement governed the dispute. App. 95a-96a. In denying the application, the trial court again held on five separate occasions that the dispute concerned the LLC operating agreements. App. 6a; 12a; 14a; 15a; 16a.

Petitioner then filed a notice of appeal seeking permission from the Delaware Supreme Court to file an interlocutory appeal, and attached the application as an exhibit. App. 72a. The Petition asserts that "[e]ach of these filings made clear that [Petitioner] was appealing from the preliminary injunction as a matter of right pursuant to 9 U.S.C. § 16(a)(2)," the Federal Arbitration Act (FAA). Pet. at 12.

It is true that both the notice and the application referred to § 16(a)(2). App. 73a; 82a. But neither document even tried to explain why a federal procedural statute applied to a case pending in a state court. Neither document cited any authority for that proposition.

The only discussion of that issue appears in a footnote in the motion to stay filed in the Delaware Supreme Court. App. 69a. That "discussion" was limited to the assertion that "[n]o case cited by the Court of Chancery" had held that § 16(a)(2) did not apply in state court and the further assertion, unburdened by authority, that the text of the statute is not "so limited." *Id.*

REASONS WHY THE PETITION SHOULD BE DENIED

I. THIS IS THE WRONG CASE TO DECIDE WHETHER CONGRESS REQUIRED STATES TO ACCEPT INTERLOCUTORY APPEALS IN ARBITRATION MATTERS.

This case is a singularly poor vehicle in which to resolve Petitioner's claim that Congress has required the states to accept interlocutory appeals from orders enjoining arbitration. First, the appeal is frivolous on the merits, so that the only consequence of this Court's review would be needless delay and expense. Second, Petitioner did not adequately present its argument to the Delaware Supreme Court and hence has waived the right to seek review.

A. Petitioner's Appeal Is Frivolous On The Merits.

The investment advisory agreement contains a mandatory arbitration clause; the LLC operating agreements do not. The trial court found, as a matter of fact, that "any reasonable reader" of the arbitration demand would conclude that the parties' dispute "is almost entirely centered on compliance with the operating agreements." App. 64a. As the record supports that factual finding, Petitioner's proposed appeal is, on the merits, completely frivolous.

The premise of that appeal is that the parties' dispute arises under the investment advisory agreement instead of the operating agreements. In its order enjoining the arbitration, the trial court repeatedly found otherwise. App. 51a (Petitioner "filed an arbitration complaint that almost entirely relies on the operating agreement"); App. 56a ("whole essence of the complaint in arbitration" is "covered

by the operating agreement's dispute resolution clause"); App. 57a (dispute is "exactly the thing" that Petitioner "consented to have adjudicated in the courts of this state"); App. 59a ("absent the specific provisions of the operating agreements . . . it wouldn't be much of a claim").

In its order denying the application to appeal, the trial court repeated those findings no less than five times. App. 6a ("its complaint in arbitration was framed explicitly and predominantly in terms of the Operating Agreements"); App. 12a (claims "arise from the Operating Agreements"); App. 14a (Petitioner's arbitration demand "repeatedly accused TowerHill of violating the Operating Agreements"); App. 15a (Petitioner's arbitration demand "arises primarily from and seeks relief for breach of the Operating Agreements"); App. 16a (Petitioner's "complaint in arbitration rests almost entirely on provisions of the Operating Agreements").

The record supports these factual findings. The entire basis for the arbitration demand relates to Respondents' alleged failure to pay "the remaining 10% of the reported Redemption Value," to account for "the handling and use" of the "cash held to pay the Redemption Value," and to pay interest on "the Redemption Value." App. 135a-136a. The relief requested was immediate disbursement of the "undistributed 10%" of Petitioner's investment in each LLC, plus interest. App. 139a-140a.

The investment advisory agreement does not say one word about redemption. The sole source of Petitioner's redemption rights is Article VI of the operating agreements. Supp. App. 15a. The sole source of Petitioner's claims is the alleged failure to

honor the redemption provisions of the operating agreements.

Because the appeal is frivolous on the merits, a grant of certiorari will only delay the ultimate disposition of the case and cause considerable expense to the parties. Suppose the Court were to grant the petition. The timing is such that the case could not be resolved this Term, so close to a year would elapse before the Court ruled.

Suppose the Court were to agree with Petitioner that it was entitled to an interlocutory appeal. This Court would not resolve the merits of the appeal but would remand to the Delaware Supreme Court which, after the lapse of many more months, would affirm on the merits. There is no reason for the Court to assist in this sort of useless delay and expense.

There are disturbing indications that delay and expense are precisely what Petitioner wants. The underlying dispute concerns approximately $150,000 in interest and the parties have spent considerably more than that on legal fees to date. This Court should not assist Petitioner in whatever ulterior motive is animating its conduct.

B. Petitioner Did Not Properly Present Its Argument To The Delaware Supreme Court And That Court Did Not Address It.

The Delaware Supreme Court did not address Petitioner's argument that § 16(a)(2) gave it a legal right to appeal, even if Delaware law did not. The reason is that Petitioner did not properly brief the issue under Delaware rules. This Court has repeatedly held that it will not address issues not ade-

quately presented to the state courts in conformity with state procedural rules.

Principles of comity dictate that this Court will not issue certiorari to a state court unless "the record **clearly shows** that the federal issue has been **properly raised**" in the state court. *Webb v. Webb*, 451 U.S. 493, 499 (1981) (emphasis added). *Accord*, *Howell v. Mississippi*, 543 U.S. 440, 444 (2005). That rule requires the petitioner to present the issue "at the time and in the manner required by the state law." *Webb*, 451 U.S. at 501.

The Delaware Supreme Court did not discuss appealability as of right under the FAA. App. 2a-3a:

> When the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.

Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 550 (1987), and cases there cited (internal punctuation omitted).

Here, there is no question that Petitioner did not properly present the issue to the Delaware Supreme Court. Petitioner's application for certification and its notice of appeal both cited § 16(a)(2) as a basis for the appeal. App. 73a; 82a. But neither document explained why Petitioner thought that a federal statute governed proceedings in a state court. Petitioner's only attempt to develop that argument appeared in a footnote to its motion to stay. App. 69a n.1. The footnote cited no authority for the proposition that § 16(a)(2) applied to state courts.

That "briefing" does not comply with Delaware procedural rules. Rule 14(d) of the Delaware Supreme Court Rules provides that "[f]ootnotes shall not be used for argument ordinarily included in the body of a brief." The Rule means precisely what it says: the "failure to raise a legal issue **in the text** of the opening brief generally constitutes a waiver of that claim on appeal." *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) (emphasis added). *Accord*, *Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994).

This Court has squarely held that arguments to the lower tribunal limited to footnotes are inadequate to preserve a point. In *Communist Party of the U.S. v. Subversive Activities Control Board*, 367 U.S. 1 (1967), the aggrieved party attempted to raise an issue in a footnote to a 224 page brief. This Court held that such "briefing" was "plainly insufficient to raise the issue here." 367 U.S. at 34 n.10. *Accord*, *Turner Broadcasting System v. FCC*, 520 U.S. 180, 224 (1997) (argument limited to four paragraphs, two of them footnotes, provides an "insufficient basis to make an informed judgment").

For either reason, the Court should deny the petition without regard for the merits of the issue Petitioner presents.

II. PETITIONER HAS GREATLY EXAGGERATED THE ALLEGED CONFLICT BETWEEN THE VARIOUS STATE COURTS.

According to Petitioner, three state courts of last resort have "explicitly recognized" that § 16 applies in state court. Pet. at 22. This assertion greatly exaggerates the actual holdings. The cases Petitioner cites either assume that § 16 applies or look to it for

guidance in interpreting their own state laws. None of these cases hold that Congress intended to impose § 16 on states that do not wish to adopt it, which is the legal position Petitioner is advocating.

The holding in *Riscorp, Inc. v. Occupational Safety Ass'n of Alabama Workmen's Compensation Fund*, 796 So.2d 1062 (Ala. 2000), was that the petition for mandamus was untimely. 796 So.2d at 1066. The opinion contains dicta that § 16 allows an interlocutory appeal. *Id., quoting A.G. Edwards & Sons, Inc. v. Clark*, 558 So.2d 358 (Ala. 1990). In *Clark*, the parties and the court simply assumed that "defendants do indeed have a right to appeal the trial court's denial under 9 U.S.C. § 15 [sic]." 558 So.2d at 360.

In *Dyre Law Firm, PLLC v. Bradley*, 874 So.2d 984 (Miss.), *cert. denied*, 543 U.S. 1000 (2004), the opinion states that defendants appealed "pursuant to the Federal Arbitration Act." 874 So.2d at 985. The opinion did not further discuss the issue. In *Dakota Wesleyan University. v. HPG International, Inc.*, 560 N.W.2d 921 (S.D. 1997), the court "turn[ed] to the FAA for guidance" in determining appealability. 560 N.W.2d at 922.

The Petition quotes the recent decision in *Lawrence v. Beverly Manor*, 2009 WL 77879 (Mo. banc Jan. 13, 2009), for the proposition that Missouri determines appealability of arbitration orders "'under the influence, if not the command of the provisions of the Federal Arbitration Act . . . .'" Pet. at 23 n.12. The elided words are "and the Missouri Uniform Arbitration Act." 2009 WL 77879 at 1 n.2.

These cases do not create the kind of conflicts that warrant this Court's review. It is one thing for the

North Dakota Supreme Court to "turn to" the FAA for guidance, or for the Missouri Supreme Court to be "influenced" by the federal statute. It is quite another to say that Congress has required states to allow interlocutory appeals in cases when state law would otherwise disallow them.

This Court has never even hinted at endorsing the latter proposition. In the three cases in which this Court has cited § 16, it has suggested that this federal statute applies to federal cases. *Green Tree Financial Corp. v. Randolph*, 531 U.S. 79, 84 (2000) (§ 16 "governs appeal from a **District Court's** arbitration order"); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948-49 (1995) (§ 16 "allows courts of appeals to conduct interlocutory review of certain antiarbitration **district court** rulings"); *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 880 n.7 (1994) (§ 16 allows appeal "when a **district court** rejects a party's" demand for arbitration) (all emphases added).

Forcing a state to afford an interlocutory appeal as of right is highly intrusive to that state's sovereignty. Basic principles of comity and federalism dictate that, assuming that Congress has constitutional power to do so, it "must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (citations and internal punctuation omitted).

Missouri requires its judges to retire at age 70. *Gregory* challenged that policy as a violation of federal Age Discrimination Act. In rejecting that challenge, this Court enunciated a number of principles that bear directly on Petitioner's theory here:

- Federal legislation "in areas traditionally regulated by the States" is "an extraordinary power" that "we must assume Congress does not exercise lightly." 501 U.S. at 460.
- This Court "must be certain of Congress' intent before finding that federal law" usurps normal state prerogatives. *Id.*
- The "requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Id.* at 461.
- The Court "must be absolutely certain that Congress intended" to displace state law. *Id.* at 464.

Nothing in the language of § 16 "makes it unmistakably clear" that Congress intended the statute to override contrary state law. Section 16(a) merely provides that "[a]n appeal may be taken from" various orders hostile to arbitration, including, in subsection (2), interlocutory orders enjoining an arbitration. Nothing in the text of the statute even hints that Congress intended to apply this rule to a state that would otherwise refuse such an appeal.

Nothing in the text of the statute warrants treating § 16(a)(2) differently from § 16(a)(1). If the former subsection applies to the states, so logically should the latter. But at least three subparts of subsection (a)(1) can only apply to federal courts:

- Subpart (A) permits an appeal from an order denying a stay under 9 U.S.C. § 3, which refers to proceedings in "any of the courts of the United States."

- Subpart (B) permits an appeal from an order denying a petition to enforce an arbitration clause under 9 U.S.C. § 4, which refers to a petition in any "United States district court."
- Subpart (C) permits an appeal from an order denying an application under 9 U.S.C. § 206 to compel an international arbitration. Section 206 allows such an application to a court "having jurisdiction under this chapter" and 9 U.S.C. § 203 confers such jurisdiction on "district courts of the United States."

The Petition explicitly concedes that these subparts of § 16 "can apply only to appeals from federal court orders." Pet. at 20. These subparts are clear evidence that Congress intended § 16(a) to apply to federal courts, not to state courts.

Similarly, there is no textual basis for treating 16(b) differently from § 16(a). Section 16(b) generally prohibits interlocutory appeals of orders favorable to arbitration, "[e]xcept as otherwise provided in section 1292(b) of title 28." No one has ever suggested that § 1292(b) applies to state courts and the text of that statute would not permit such an argument. So the exception makes no sense unless § 16 is confined to federal courts.

Petitioner's principal argument to the contrary is that an interlocutory appeal from an order enjoining arbitration is good policy, because it would avoid unnecessary trials. Pet. at 16-19. That argument has no relevance to the instant case because, as previously explained, Petitioner's appeal is frivolous on the merits. In any event, "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text." *Mertens v. Hewitt*

Associates, 508 U.S. 248, 261 (1993). Still less are they sufficient to satisfy the "clear statement" required by *Gregory*.

Petitioner also asserts that § 16 "contains no terms that would limit its application to orders entered by federal courts," Pet. at 20, and the statute "can readily be construed to apply in state court proceedings." Pet. at 28. This argument has the law exactly backwards:

> [I]n this case we are not looking for a plain statement that judges are excluded. We will not read the ADEA to cover state judges unless Congress has made it clear that judges are included.

Gregory, 501 U.S. at 467 (emphasis original).

Finally, Petitioner claims that § 16(a)(2) is susceptible to "two inferences" that it applies to state courts. Pet. at 20. By definition, "inferences" cannot satisfy *Gregory's* requirement of a "clear statement" in the text of the statute. If § 16 did contain such a provision, Petitioner would not have to resort to inferences.

CONCLUSION

For these reasons, Respondents respectfully pray that the Court deny the petition for a writ of certiorari.

Respectfully submitted,

RICHARD I.G. JONES
Of Counsel
ASHBY & GEDDES
500 Delaware Avenue
8th Floor
P.O. Box 1150
Wilmington, DE 19899
(320) 654-1888

MARK G. ARNOLD
Counsel of Record
HARRY B. WILSON
R. PRESCOTT SIFTON, JR.
Of Counsel
HUSCH BLACKWELL
SANDERS LLP
The Plaza in Clayton
Office Tower
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105
(314) 480-1500

Counsel for Respondents

APPENDIX

APPENDIX A

OPERATING AGREEMENT OF CPW INTERNATIONAL EQUITIES, LLC A DELAWARE LIMITED LIABILITY COMPANY

Dated effective November 1, 2004

This OPERATING AGREEMENT, dated as of the 1st day of November, 2004, is entered into by and among the Initial Members and the Manager designated in Section 1.3. The Initial Members are listed on Exhibit A hereto. The Initial Members and such other persons hereafter admitted as members of the Company are referred to collectively as the "Members" and each, individually, a "Member." All capitalized terms used herein shall have the meaning ascribed to such terms in Exhibit B hereto.

ARTICLE I.
ORGANIZATION

Section 1.1 Formation. The Company was formed as a Delaware limited liability company under the Act, pursuant to the Certificate of Formation filed with the Secretary of State of the State of Delaware on August 6, 2004. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of the Members are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

Section 1.2 Name. The name of the Company shall be "CPW INTERNATIONAL EQUITIES, LLC." All business of the Company shall be conducted under

such name. The Manager may change the name of the Company on ten (10) days' prior notice to all Members, which name change shall be effective upon the filing of an amendment to the Certificate of Formation with the Delaware Secretary of State.

Section 1.3 Manager. Except as reserved to the Members under the terms of the Act or this Operating Agreement, the Manager shall be solely responsible for the operations of the business and affairs of the Company. The Members hereby designate Capital Private Wealth Management, LLC, a Delaware limited liability company, as the Manager of the Company to act as "manager" of the Company within the meaning of the Act. The Manager may resign as manager of the Company at any time upon sixty (60) days' prior written notice to each Member. Upon giving sixty days' prior written notice, the Manager shall not be required to serve as manager until a new manager is elected.

Section 1.4 Custodian.

(a) All assets of the Company shall be held in custody by a qualified custodian independent of the Manager and of the Account Managers or by a broker-dealer registered under the Securities and Exchange Act of I934, as amended. The Manager shall appoint the Custodian in its sole discretion, which Custodian may be replaced at any time in the Manager's sole discretion. All investment transactions shall be consummated by payment to or delivery by the Custodian of the cash or other property due to or from the Company. Instructions of the Manager or any Account Manager with respect to the Company shall be made in writing. The Manager shall not take or have possession of any Company assets.

(b) The Custodian shall transfer such funds upon the direction of officers or employees of the Manager who are authorized signatories for the Company's account, only as follows:

(i) To a trust company or bank trust department or brokerage firm that, to the best of the Custodian's knowledge, is independent of the Manager or its affiliates, for the account of the Company;

(ii) To the Members named on a list provided by the Manager;

(iii) To third Persons who, to the best of the Custodian's knowledge, are independent of the Manager, (A) in payment of the fees or charges of such third Persons (including but not limited to the attorneys for the Company and Custodian), or (B) for any other purpose that, to the best of the Custodian's knowledge, is legitimately associated with the management of the Company; and

(iv) In the course of portfolio purchases and sales to a Person not affiliated with the Manager, provided that such transfer is made on a payment against delivery basis, and in the course of capital contributions and withdrawals in respect of Investment Vehicles.

Section 1.5 Place of Registered Office; Registered Agent. The address of the registered office of the Company in the State of Delaware Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent at such address for service of process on the Company in the State of Delaware is Corporation Trust Center. The principal place of business of the Company shall be located at 10 South Lyle Avenue,

St. Louis, Missouri 63105. The Manager may at any time on 10 days' prior notice to all Members change the location of the Company's registered office or principal place of business or change the registered agent, if it deems it advisable.

Section 1.6 Purposes.

(a) The purposes of the Company shall be to invest, through Investment Vehicles and with Account Managers, in (i) domestic and foreign equity investments, such as stocks, financial futures, foreign exchange contracts, swaps, puts, calls, options, warrants or partnership interests, whether any of such investments are liquid or illiquid, and (ii) any other publicly traded securities which the Manager may deem advisable and in the best interest of the Company.

(b) Notwithstanding the provisions of subparagraph (a) above, the Company may not: (i) issue any senior securities; (ii) underwrite the securities of other issuers; (iii) purchase or sell real estate; (iv) invest in companies for the purpose of exercising control of management; or (v) purchase portfolio securities from or sell such securities directly to the Manager, any Account Manager, or the Custodian or any of their respective officers, directors, partners or employees, as principal for their own accounts.

Section 1.7 Term. The Company shall continue in existence until the Company is terminated pursuant to Article X.

Setiion 1.8 Fiscal Year. The fiscal year of the Company shall be the calendar year.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations of the Members. Each Member hereby represents and warrants to each other Member and the Manager as follows:

(a) The Member is an entity duly organized, validly existing and in good standing under the laws of the state of its organization and has the requisite power and authority to make, execute, deliver and perform the Agreement, and the Agreement has been duly authorized and approved by all required action of the Member. The Agreement has been duly executed and delivered on behalf of the Member and constitutes the valid and binding obligation of the Member enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable laws of the United States or any state thereof pertaining to bankruptcy or other laws of general application relating to creditors' rights or general principles of equity.

(b) The execution and delivery of the Agreement by the Member and the consummation of the transactions contemplated thereby (i) will not violate any statute, rule, regulation, order or decree of or require any notice to or filing with or authorization, consent or approval of any governmental body or authority by which the Member or any of the properties of the Member are bound, and (ii) will not result in a violation or breach of, or constitute a default under, any license, franchise, permit, indenture, agreement or other instrument to which the Member or any of its properties is bound.

(c) The Member is acquiring its Beneficial Interest in the Company for its own account and not with a

view to or for sale in connection with any distribution thereof.

(d) The Member:

(i) is familiar with the proposed investments of the Company;

(ii) has not been formed for the specific purpose of acquiring its interest in the Company;

(iii) is a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940, as amended;

(iv) is an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933, as amended (the "1933 Act");

(v) is not a tax-exempt entity;

(vi) has had an opportunity to discuss with representatives of the Manager the condition of and prospects for the operation and financing of the Company and such other matters as the undersigned has deemed appropriate in considering whether to become a Member of the Company; and

(vii) has been provided access to all available information about the Company requested by the Member.

(e) The purchase the Member's Beneficial Interest is being made under the direction of individuals associated with the Member having such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of such purchase.

(f) The Member understands that the Beneficial Interests in the Company have not been registered un-

der the 1933 Act, or registered or qualified under the securities laws of any state and that the Member may not transfer its Beneficial Interest.

Section 2.2 Representations of the Manager. The Manager represents and warrants as follows:

(a) The Manager is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended (the "1940 Act") and acknowledges that it is a fiduciary with respect to the Company.

(b) The Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Manager has the power and authority to make, execute, deliver and perform this Agreement and this Agreement has been duly authorized and approved by all required action of the Manager. This Agreement is a valid and binding obligation of the Manager enforceable against it in accordance with its terms, except as the enforcement thereof may be limited by applicable laws of the United States or any State thereof pertaining to bankruptcy or other laws of general application relating to creditors' rights or general principles of equity.

(c) The execution and delivery of this Agreement by the Manager and the consummation of the transactions contemplated hereby (i) will not violate any provision of the Operating Agreement of the Manager, (ii) will not violate any statute, rule, regulation, order or decree or require any notice to or filing with or authorization, consent or approval of any public body or authority by which the Manager or any of its properties are bound, and (iii) will not result in a violation or breach of, or constitute a default under,

any license, franchise, permit, indenture, agreement or other instrument to which the Manager is a party, or by which the Manager or any of its properties is bound.

ARTICLE III
CAPITAL

Section 3.1 Capital Contributions. Each Initial Member and each additional Member shall make a capital contribution to the Company in immediately available funds ("Capital Contributions") on the Valuation Date as of which it is admitted to the Company and from time to time pursuant to Section 3.3. The Manager shall maintain as part of the Company's records the name and address of each Member, the amount of each Member's total Capital Contributions and the *pro rata* portion of each Member's Capital Contributions to the total capital of the Company.

Section 3.2 New Members. The Manager shall admit a new Member or new Members, as the case may be, to the Company, (i) upon the execution and delivery of a fully executed Subscription Agreement, and (ii) upon the Manager's determination that admission of such new Member or Members is not inconsistent with the best interests of the Company. The Manager, without the consent of the Members, may amend this Agreement to reflect the admission of any new Member or Members. Each such new Member shall be admitted to the Company on the first Valuation Date following receipt by the Manager of (i) notification from the Custodian of receipt of the initial Capital Contribution of the new Member in the amount as set forth in the Subscription Agreement, (ii) an executed Subscription Agreement, and (iii) such additional documentation as the Manager shall

reasonably require to so admit such new Member to the Company. Upon admission of each Member, each Member shall be bound by the provisions of this Agreement.

Section 3.3 Additional Capital Contributions. No Member shall be required to, but may, make additional Capital Contributions on any Valuation Date. Additional Capital Contributions shall be accepted by the Manager upon a determination by the Manager that each such additional Capital Contribution is not inconsistent with the best interests of the Company, and upon notification from the Custodian of receipt of payment in full of the funds for the additional Capital Contributions.

Section 3.4 Return of Capital Interest. No Member shall be entitled to withdraw any part of its Capital Contribution, to receive interest or other earnings on its Capital Contribution or to receive any distributions from the Company, except as expressly provided in this Agreement.

ARTICLE IV
INTERESTS AND CAPITAL ACCOUNTS

Section 4.1 Beneficial Interests. A Member's "Beneficial Interest" shall mean the entire ownership interest of such Member in the Company as determined on each Valuation Date, including any and all rights, powers and benefits accorded a Member under this Agreement and the duties and obligations of such Member hereunder.

Section 4.2 Capital Accounts.

(a) A separate capital account ("Capital Account") shall be maintained in respect of each Member.

(b) Each Capital Account shall be maintained and adjusted in accordance with the applicable requirements of Section 704(b) of the Code and the Treasury Regulations relating to the allocation of tax attributes to Members. Each Member's Capital Account shall be credited with (i) the initial Capital Contribution made by such Member pursuant to Section 3.1 or 3.2, (ii) additional Capital Contributions made by such Member pursuant to Section 3.3, (iii) the amount of cash and the fair market value of other property (net of liabilities that the Company is considered to assume or take subject to) transferred by such Member to the Company as additional Capital Contributions and (iv) allocations to it pursuant to Article V of this Agreement of Company income (or items thereof) including tax-exempt income and gain. A Member's Capital Account shall be debited with (i) the cash and the fair market value of property distributed to it (net of liabilities that such Member is considered to assume or to be subject to), (ii) allocations to it of expenditures of the Company not deductible in computing its taxable income, if any, and (iii) allocations to it pursuant to Article V of this Agreement of deductions or loss (or items thereof) and pursuant to Section 7.5 of advisory fees. If any property other than cash is distributed to a Member, the Capital Accounts of the Members shall be adjusted as if the property had instead been sold by the Company for a price equal to its fair market value and the proceeds distributed.

(c) Upon the making of a Capital Contribution by a new or existing Member pursuant to Section 3.1, 3.2 or 3.3 hereof and upon a distribution in connection with the liquidation of the Company or a distribution of money or other property by the Company to a retiring or continuing Member in connection with an

increase or reduction in a Beneficial Interest in the Company, in each case on a Valuation Date, the Capital Account balance of each Member shall be adjusted in accordance with Section 4.2(b) hereof.

Section 4.3 Series of Memberships.

(a) The Manager shall have the authority, without the consent of the Members, to amend this Agreement to establish one or more series of Beneficial Interests (each, a "Series"). The Manager may, in its sole discretion, through such an amendment, designate the powers, designations, preferences and relative participating, optional and other rights, including voting rights of such Series. Such Series may also have separate rights, powers, duties and obligations with respect to specified property or obligations of the Company, and with respect to profits and losses of specified property or obligations of the Company. Finally, each such Series may have a separate business purpose or objective. If Series limitations are adopted, the Manager shall promptly amend and file an amended Certificate of Formation to provide notice of such Series limitations as set forth in the Act.

(b) Pursuant to Section 18-215 of the Act, the membership interests of the Company shall be divided into four Series, designated as Share Class A, Share Class B, Share Class C and Share Class D. The Manager shall cause the Company, on behalf of each Series (i) to maintain separate and distinct records, and (ii) to hold its assets and account for its assets for separate from the other assets of the Company or any other Series. The debts, liabilities and obligations incurred, contracted for or otherwise existing with respecting to each Series shall be enforceable against the assets of such Series only, and not

against the assets of the Company generally or any other Series.

(c) Each Member shall indicate in writing to the Company to which Series a Capital Contribution made by such Member should be contributed, and the Manager shall cause the Company to account for and maintain records with respect to such Capital Contribution in accordance with such Member's indication. The Manager shall cause the Company to account for all Capital Contributions, redemptions, withdrawals, transfers, dissolutions, liquidations and terminations, profits, and losses of each Series separately according to the provisions of Articles III, IV, V, VI, IX, X and XI. Each Series may be dissolved and its affairs wound up without causing a dissolution of the Company.

(d) In the event that there are any assets, income, earnings, profits and funds of or payments to the Company which are not readily identifiable as belonging to any particular Series, the Manager shall allocate them to, between or among any one or more Series in such manner and on such basis as the Manager, in its sole discretion, deems fair and equitable. In the event that there are any liabilities, expenses, costs, charges and reserves of the Company which are not readily identifiable as being associated with any particular Series, the Manager shall allocate and charge them to, between or among any one or more of the Series in such manner and on such basis as the Manager, in its sole discretion, deems fair and equitable. Each such allocation by the Manager shall be conclusive and binding upon the Members of all Series for all purposes.

(e) Unless otherwise provided in this Section 4.3, the Members of each Series shall have the rights,

privileges, limitations and restrictions as provided in this Agreement. Notwithstanding the voting rights set forth in this Agreement, in no event shall Members of a Series be entitled to vote with respect to any matter that does not affect any interest of their specific Series. The Manager is authorized to appoint officers, employees and agents to provide services exclusively for any of the Series.

ARTICLE V
ALLOCATIONS

Section 5.1 Allocation of Profits and Losses Among the Members. As of each Valuation Date, the Manager shall determine the net investment income, the expenses, the net realized gain or loss from sale or other disposition of assets and the net unrealized appreciation or depreciation on assets since the last Valuation Date. Except as otherwise provided in Sections 5.2, 5.3 and 5.4 hereof, the amounts so determined shall be apportioned among the Members in proportion to their Capital Accounts by such equitable method or methods of apportionment as the Manager shall deem advisable.

Section 5.3 Special Allocation. Notwithstanding any of the other provisions of this Article V to the contrary, in the event that any Member unexpectedly receives any adjustments, allocations, or distributions with respect to the Company described in Treasury Regulations 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Company income and gain shall be specifically allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted Capital Account deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 5.2 shall be made if and only to the extent

that such Member would have an adjusted Capital Account deficit after all other allocations provided for in Section 5.1. The foregoing provision is intended to comply with Treasury Regulations 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

Section 5.3 Allocation of Capital Gains to Withdrawing Members. In the event a Member redeems some or all of its interest in the Company, the Manager, in its sole discretion, may make a special allocation for federal income tax purposes to such Member of the net capital gains (including allocations of items of short and long-term capital gain, and loss) recognized by the Company in such a manner as will reduce the amount, if any, by which the value of such Member's Beneficial Interest exceeds the federal income tax basis in its interest in the Company before such allocation.

Section 5.4 Special Allocation of "New Issues". If necessary and to the extent permitted under the rules of the NASD, the Company shall specially allocate only to eligible Members any long-term or short-term gains or losses, or net income or loss of any kind, attributable to direct or indirect purchases by or on behalf of the Partnership of "new issues" (as defined in such rules), including, without limitation, through the creation or designation of special Series or classes of Beneficial Interests. An eligible Member for this purpose shall be any Member who the Manager in its sole discretion determines is not prohibited by the NASD rules from acquiring such issues.

Section 5.5 Tax Incidents. It is intended that the Company will be treated as a pass- through entity for tax purposes. Subject to Section 704(c) of the Code, for Federal and state income tax purposes, all items

of Company income, gain, loss, deduction, credit and any other allocations not otherwise provided for shall be allocated among the Members in the same manner as the corresponding item of income, gain, loss or deduction was allocated pursuant to the preceding Sections of this Article V.

Secion 5.6 Tax Elections. The Manager shall make all applicable elections, determinations and other decisions under the Code, including the positions to be taken on the Company's Federal information return.

ARTICLE VI
REDEMPTION OF INTERESTS

Section 6.1 Right to Redeem Interests. Each Member shall have the right, on the terms and conditions set forth herein, to cause the Company to redeem all or part of its Beneficial interest as of the applicable Valuation Date as provided in Section 6.3 herein by delivery of a written notice (a "Redemption Notice") to the Manager of its intention to so cause a redemption; provided, however, that no Member that is redeeming only a part of its Beneficial Interest shall have the right to redeem an amount which will result in such Member's adjusted Capital Account balance, as recalculated pursuant to Section 4.2 hereof on the applicable Valuation Date for the redemption, being less than $100,000.

Section 6.2 Redemption Value. The value that the Company shall be obligated to pay to any Member electing to redeem all of its Beneficial Interest pursuant to Section 6.1 hereof shall be the amount of such Member's Capital Account balance as recalculated pursuant to Section 4.2 hereof as of the applicable Valuation Date for the redemption as provided in Section 6.3 herein (the "Redemption Value"). The value that the Company shall be obligated to pay to

any Member treated under Section 6.1 hereof as electing to redeem part of its Beneficial Interest shall be the amount subject to such Member's Redemption Notice.

Section 6.3 Mechanics of Redemption.

(a) A Member must remain in the Company for at least one year without any right of redemption. After the initial one-year period, a redemption may be made at the end of any calendar quarter, provided that a Redemption Notice has been received by the Manager thirty (30) days prior to the end of the calendar quarter, and no such direction to redeem may be revoked unless permitted in whole or in part by the Manager. Ninety percent (90%) of the Redemption Value shall be paid as soon as reasonably practicable but in any event no later than the thirtieth business day after the applicable Valuation Date. The remaining ten percent (10%) of the Redemption Value shall be paid as soon as reasonably practicable but in any event upon completion of the next Audit, and shall be made net of expenses to the Company incurred by the Company in connection with such redemption. All redemptions shall be made in cash, or, in the sole discretion of the Manager, in kind or partly in kind. The value of such property shall be determined by the Manager as of the applicable Redemption Date, and such Member shall receive such investments held by the Company as may be determined by the Manager and any Account Managers. Such distribution need not be a proportionate interest in each investment held by the Company, so long as the distribution otherwise satisfies the requirements of applicable law, including, without limitation, ERISA. The redeeming Member shall receive the Redemption Value less any fees charged in ef-

fecting such redemption. Notwithstanding the foregoing, in the event the Manager receives notification from the Custodian or one or more Account Managers to the effect that, or the Manager determines in its sole discretion that, such redemption cannot be effected or it is not reasonably practicable to effect such redemption within the time prescribed hereinabove, the Manager shall notify the redeeming Member of the same and shall cause the designated redemption to be made within such reasonable period of time as the Manager may deem appropriate. A redeeming Member shall execute such documents and certificates as the Manager shall reasonably request to evidence the partial or full redemption of such Beneficial Interest and the withdrawal of the Member in the case of a redemption of the redeeming Member's full Beneficial Interest. After any Redemption Date, the Manager shall recalculate each remaining Member's Beneficial Interest and Capital Account as of the Applicable Valuation Date.

(b) Subject to the terms of Section 6.3(a) hereof, no Member may receive a full redemption of its Beneficial Interest until the following additional conditions are met:

(c) The Redemption Notice shall have been given to the Manager on or before thirty (30) days prior to the applicable Valuation Date in accordance with Section 6.3(a) hereof; and

(d) The Manager shall determine that the Company has paid or has the ability to pay all of its liabilities, including the remaining Beneficial Interests of any remaining Members.

Section 6.4 Member Withdrawal. Subject to Section 9.1 hereof in the event of withdrawal of a Mem-

ber or the occurrence of any other event which terminates the continued membership of a Member in the Company, except as otherwise provided in this Agreement or applicable law, the successors, assigns or personal representative of the Member shall have no right to participate in the management of the business and affairs of the Company or to become a Member. Such successor, assign or personal representative shall be entitled to receive the share of profit or other compensation by way of income and return of the contribution to which the terminating Member would otherwise be entitled, as if said Member had redeemed its entire Beneficial Interest on the date of the termination of its membership in the Company.

Section 6.5 Manager's Discretion. The Manager, without the consent of the Members:

(a) May amend this Agreement to reflect the withdrawal of any Member or Members; or

(b) In its sole discretion, with or without cause, may terminate and require any Member to withdraw from the Company upon delivery to such Member of written notice of its termination, which notice shall constitute and have the same effect as a Redemption Notice given by such Member.

ARTICLE VII
OPERATIONS

Section 7.1 Exclusive Authority to Manage. Except as provided in the Act or as expressly provided herein, the ,Manager shall have the exclusive power and authority over the conduct of the Company's business, operations and affairs, including, but not limited to, the performance of investment advisory services for the Company. In furtherance thereof, the

Manager is hereby authorized and empowered, on behalf and in the name of the Company (i) to carry out the purposes of the Company and (ii) to perform all acts, and to enter into and to perform all contracts and other undertakings, including without limitation, agreements with one or more Account Managers, which the Manager may in its sole discretion deem necessary or advisable, or which are incidental, to carry out the purposes of the Company. In addition, the Manager shall be entitled to take any other action on behalf of the Company required to cause the Company to be in compliance with any applicable governmental regulations. Any action taken by the Manager shall constitute the act of and serve to bind the Company. Notwithstanding anything in this Agreement to the contrary, the Manager shall have neither the right nor the obligation to provide investment advisory services to the Company.

Section 7.2 Discretionary Authority for Investments. The Manager shall have full power and discretionary authority over the investments of the Company without prior consultation or approval of any of the Members. With the exception of overseeing and directing the liquidation by the Custodian of a holdover security, the Manager shall not be involved in the actual buying or selling transactions of any investment or security and shall not take or have possession of Company assets. Prior to the Company's investment in any Investment Vehicle, the Manager shall review such Investment Vehicle's governing documents to ensure that its investment guidelines or restrictions are appropriate and consistent with the Company's purpose. Subsequent to the Company's investment in any Investment Vehicle, the Manager shall periodically review such Investment Vehicle's investment portfolio to ensure that its

investments are appropriate and consistent with the overall objectives of the Company's strategy. To the extent the assets of the Company are subject to the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), the Manager shall be authorized as a "named fiduciary" (within the meaning of Section 402(a)(2) of ERISA). The Manager shall seek investments which, in the judgment of the Manager, appear to have the capability to meet the Company's investment purposes, and shall manage the investment of Company assets in accordance with the requirements and fiduciary standards applicable to it under the 1940 Act, as amended from time to time, any regulations promulgated, and to the extent applicable, ERISA. The Manager may, in exercising its discretionary authority over the Company's investments, rely on any one or more of several criteria in selecting an Account Manager (including, but not limited to, published reports of past performance, personal interviews with the separate account manager or its employees, and historic portfolio trading or strategy information from the Account Manager). The Manager shall enter into an agreement with each Account Manager and these agreements shall be made available for review at the reasonable request of any Member.

Section 7.3 Authority to Delegate Appointment and Monitoring of Account Managers. The Manager shall have the power and authority to delegate the power and authority to select, dismiss and monitor Account Managers, without prior consultation with or approval of the Manager, to Pacific Alternative Asset Management Company, LLC ("PAAMCO") or any other sub-adviser selected by the Manager (the "Sub-Adviser"), subject to the Manager's discretion and/or supervision. Compensation for services rendered by

PAAMCO or any other Sub-Adviser utilized by the Manager for services on behalf of the Company shall be payable by the Manager.

Section 7.4 Acknowledgement. Each Member acknowledges (i) that the Manager has the authority to appoint Account Managers in accordance with this Agreement, (ii) that the Manager has the authority to appoint PAAMCO or any other Sub-Adviser it chooses to select and monitor Account Managers on its behalf and (iii) advance receipt of Part II of the Manager's Form ADV as filed with the U.S. Securities and Exchange Commission. The Manager shall provide, upon request, each Member with a current version of Part II of the Form ADV of each Account Manager appointed to act for the Company.

Section 7.5 Company Expenses. The Company shall direct the Custodian to pay the fees and expenses of the Manager as set forth in a separate fee agreement with each Member. The Manager shall instruct the Custodian to pay from the assets of the Company all other fees and expenses of the Company, including, but not limited to Custodian, Account Manager, accounting, tax, audit or legal fees.

Section 7.7 Members. Except as provided in the Act or as otherwise expressly provided in this Agreement, the Members shall take no part in the conduct, management, operation or control of the Company or the Company's business and shall have no authority or power to act for or to bind the Company. No Member shall take any action on behalf of the Company or in any way commit the Company to any agreement or obligation and the Members shall have no right, power or authority to do any of the foregoing.

Section 7.7 Valuations. Notwithstanding anything herein to the contrary, the Manager in making valuation determinations with respect to the assets of the Company required by or necessary for the purposes of this Agreement may rely, whenever practicable and in its sole discretion, on valuations provided by the Account Managers, PAAMCO, any other Sub-Adviser, Custodian or independent auditors selected by the Manager or the Account Managers.

Section 7.8 Removal of Manager. The Manager may be removed by a vote of a majority of the Beneficial Interests only if the Manager has engaged in conduct constituting (i) gross negligence, willful or criminal misconduct which causes a material loss to the Company or a Member; (ii) willful breach of this Agreement, the Account Manager Agreement, the Sub- Adviser Agreement or the Custodian Agreement which causes a material loss to the Company or a Member or (iii) a breach of its fiduciary duties to the Company or a Member which causes a material loss to the Company or a Member. Such removal shall be effective upon the appointment of a new manager and the assumption of the duties of the Manager by such new manager, provided that the Manager has no duty to act during the period between the removal of the Manager and the appointment of the new manager.

ARTICLE VIII
ACCOUNTING

Section 8.1 Books and Records. The Manager shall cause to be maintained books of account of the Company, which shall be maintained in accordance with generally accepted accounting principles in the United States of America consistently applied, and all other records necessary, convenient, or incidental

to the business of the Company as provided for herein.

Section 8.2 Reports.

(a) After the end of each fiscal year of the Company, the Manager shall cause to be prepared and distributed to each Member and to the Company, at the expense of the Company, an audited balance sheet showing the assets and liabilities of the Company as of the close of such year and an audited statement of income and expenses showing the results of operations for such year (collectively, the "Financial Statements"), which audits (each, an "Audit") shall be performed by a firm of independent public accountants selected by the Manager. The requirement for such Audits of the Company outlined in this Section may be waived at any time, for any reason, by Members holding a majority interest of the Capital Accounts of the Company. The Manager shall cause to be prepared and distributed to a Member unaudited Financial Statements quarterly, and as of a Valuation Date upon the reasonable request of the Member. As soon as possible after the end of each fiscal year of the Company, the Manager shall deliver to each Member such information as shall be necessary for the preparation by such Member of its Federal and state income or other tax and information returns.

(b) The Manager shall cause the following documents to be prepared and distributed to each Member quarterly: (i) a statement of the value of the Member's Beneficial Interest in the Company; (ii) a cash statement of the transaction activity regarding the Member's Beneficial Interest since the end of the previous quarter; (iii) a portfolio level valuation report, if requested; and (iv) a portfolio level cash

statement of the transaction activity, if requested. In addition, customized reports may be made available upon the request and at the expense, payable in advance, of the requesting Member.

(c) If the assets of the Company are deemed to be the assets of any Member or Member subject to ERISA, the Manager shall, on or before the date prescribed by laws (i) transmit to each Member subject to ERISA all information necessary to enable such Member to comply with the requirements of Title I of ERISA, together with an appropriate certification of the accuracy of such information as required by Section 103(a)(2) of ERISA and (ii) file directly with the U.S. Department of Labor ("DOL") the information called for by DOL regulations codified at 29 C.F.R. § 2520.103-12, if such filing procedure is available to the Company.

(d) The Manager shall cause information regarding any material changes in the Act to be provided to the Members as promptly as practicable, and shall provide the Members with reports on any other changes in such from time to time as the Manager shall in its sole discretion deem necessary or advisable.

Section 8.3 Approval of Reports. A Member to which a report or statement is submitted pursuant to Section 8.2 hereof may approve such report by an instrument in writing delivered to the Manager. If such Member does not file exceptions or objections to such report with the Manager within ninety (90) days after such report is received, such Member shall be deemed to have approved such report. Upon the approval of such report, either in writing or by failure to file timely exceptions or objections with the Manager, the Manager shall, to the extent permitted by applicable law, be released, relieved and discharged of and

from all liability to all such Members and to all Persons to whom the Manager is required to report with respect to its acts or failures to act described by such report during the period covered thereby.

Section 8.4 Inspection of Company Records. Each Member shall have the right, subject to reasonable standards established by the Manager in its sole discretion, to audit, examine and make copies of, or extracts from, the books of account and other financial records of the Company as listed in Section 18-305(a) of the Act, at its principal place of business upon reasonable demand for any purpose reasonably related to the Member's interest as a Member of the Company. Each Member shall bear all expenses incurred in any examination made for such Member's account and shall keep all information obtained during such inspection confidential. In the exercise of their rights under this Section, the Members agree that they shall not cause any unreasonable interference with or disruption of the Company business. If required by applicable law, the Manager agrees to provide the CFTC, the National Futures Association, the United States Department of Justice and such other governing regulatory agency with jurisdiction over the business of the Company and their representatives with access to the records of the Company in the possession and control of the Manager.

ARTICLE IX
TRANSFERS

Section 9.1 Transfers. No Member may sell, assign, transfer, exchange, charge, pledge, give, hypothecate or otherwise convey or encumber (any such transaction being hereinafter referred to as a "Transfer"), directly or indirectly, by operation of law or otherwise, voluntarily or involuntarily, any Beneficial

Interest without the prior written consent of the Manager; provided, however, that a transfer of title by a trustee or other fiduciary of a Member to a successor fiduciary or agent shall not be deemed a Transfer for purposes of this Section. Any Transfer of any Beneficial Interest in contravention of this Article IX shall be null and void and of no force whatsoever.

ARTICLE X
DISSOLUTION, LIQUIDATION AND TERMINATION OF COMPANY

Section 10.1 Limitations. The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Article X and the parties hereto hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company's assets.

Section 10.2 Exclusive Causes. Only the following events shall cause the Company to be dissolved, liquidated and terminated:

(a) The unanimous written agreement of the Members to so dissolve, liquidate and terminate the Company;

(b) The sole discretion of the Manager; or

(c) A dissolution of the Company required under the provisions of Section 18-801 or 18-802 of the Act.

Section 10.3 Liquidation. Subject to the requirements of Sections 18-803 and 18-804 of the Act, in all cases of dissolution of the Company the business of the Company shall be continued to the extent necessary to allow an orderly winding up of its affairs, including the liquidation of the assets of the Company

pursuant to the provisions of this Section, as promptly as practicable thereafter, and each of the following shall be accomplished:

(a) The Manager shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.

(b) The property of the Company shall be liquidated or distributed in kind by the Manager as promptly as possible, but in an orderly, businesslike and commercially reasonable manner. The Manager may, in the exercise of its business judgment and if commercially reasonable, determine (i) to sell all or any portion of the property of the Company to a Member, provided that the purchase price is not less than the fair market value of such property as determined in the sole discretion of the Manager or its designee, or to any other Person; provided further, such sale does not violate applicable law, including, without limitation, the prohibited transaction provisions of ERISA or the Code, or (ii) not to sell all or any portion of the property of the Company, in which event such property and assets shall be distributed in kind pursuant to Section 10.3(d).

(c) Any gain or loss realized by the Company upon the sale of its property shall be deemed recognized and allocated to the Members in the manner set forth in Article V. To the extent that an asset is to be distributed in kind, such asset shall be deemed to have been sold at its fair market value on the date of distribution, the gain or loss deemed recognized upon such deemed sale shall be allocated in accordance with Article V and the amount of the distribution

shall be considered to be such fair market value of the asset.

(d) The proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:

(i) To the payment of the debts and liabilities of the Company (including, without limitation, any incentive fees and any other amounts owed to the Manager, any Account Manager and the Custodian) and the expenses of liquidation or distribution;

(ii) To the setting up of any reserves which the Manager shall determine to be reasonably necessary for contingent, unliquidated or unforeseen liabilities or obligations of the Company or the Member arising out of or in connection with the Company. Such reserves may, in the discretion of the Manager, be held by the Manager or such bank or title company as escrow holder or liquidating trustee for the purposes of disbursing such reserves to satisfy the liabilities and obligations described above. Such reserves shall be held for such period as the Manager shall deem advisable, and upon the expiration of such period, any remaining balance shall be distributed as provided in clause (iii) of this subsection; and

(iii) The balance, if any, to the Members having positive Capital Account balances (after all adjustments thereto otherwise required hereunder), proportionately to their respective positive Capital Account balances (as so adjusted); provided, that in the discretion of the Manager, sale proceeds and assets to be distributed in kind need not be distributed pro rata so long as the

aggregate distributions are in the amounts set forth in this Section 10.3(d)(iii) and the distribution otherwise satisfies the requirements of applicable law, including without limitation, ERISA.

ARTICLE XI
INDEMNIFICATION AND LIABILITY

Section 11.1 Limitation of Liability. To the maximum extent permitted by applicable law, the Manager shall not be liable to the Company or the Members (i) for mistakes of judgment or for any act or omission suffered or taken by it, or for losses due to any such mistakes, action or inaction, except to the extent of the willful misfeasance, bad faith or gross negligence of such Manager or (ii) for the willful misfeasance, gross negligence, bad faith or other conduct of any independent contractor of the Company selected by the Manager, provided that such independent contractor (including any who may be a Member) was selected, engaged or retained and continued in good faith and in a manner reasonably believed to be in the best interests of the Company; provided, however, that the Manager shall not be liable for any act or omission suffered or taken by any Account Manager or the Custodian.

Section 11.2 Indemnification. Except as set forth in Section 11.1, to the maximum extent permitted by applicable law, the Manager shall not be liable for and the Company shall indemnify the Manager against, and agrees to hold the Manager harmless from, all liabilities and claims (including reasonable attorney's fees and expenses in defending against such liabilities and claims) against the Manager, arising from the Manager's performance of its duties in conformance with the terms of this Agreement.

Section 11.3 Consultation with Legal Counsel and Accountants. The Manager may consult with legal counsel or accountants selected by the Manager and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and accordance with the written opinion or advice of any such counsel or accountants (provided such counsel has been selected with reasonable care) shall be full protection and justification with respect to the action or omission so suffered or taken.

Section 11.4 Member's Capital Contribution. Except as set forth in Section 11.1, the Manager shall not be personally liable for the return of all or any part of a Member's Capital Contribution or payment of any amounts allocated to it or credited to its Capital Account, which return or payment shall be made solely from, and to the extent of, the Company's assets.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Additional Procedures. The Manager may establish any additional procedures necessary to implement the provisions of this Agreement.

Section 12.2 Notices. Any and all notices, demands, consents, approvals, requests or other communications which any Member may desire or be required to give hereunder (collectively, "Notices") shall be by telex or telecopy, confirmed by airmail to the Members at their addresses referred to on Exhibit A or such other address as a Member may from time to time designate to the others. Telex or telecopy notice shall be deemed to have been received twenty-four (24) hours after dispatch, but nevertheless it shall be confirmed by airmail within twenty-four (24) hours of dispatch. Any Member may designate another ad-

dress (and/or change its address) for Notices hereunder by a Notice given pursuant to this Section.

Section 12.3 Confidentiality. The Manager and the Members of the Company agree that all information and advice provided by or to the Manager, a Member, or the Custodian hereunder shall be treated as confidential and shall not be disclosed to third parties (other than necessary service providers for the Company) except as required by law.

Section 12.4 Entire Agreement. This Agreement constitutes the only agreement between the parties hereto pertaining to the subject matter hereof, and supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

Section 12.5 Section Headings. The section headings used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, modify or otherwise be used in the interpretation of any of the provisions hereof.

Section 12.6 Counterparts. This Agreement may be executed in several counterparts and all such executed counterparts shall constitute a single agreement, binding on all of the parties hereto, their successors and their assigns, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart. Each counterpart signature page so executed may be attached to a master counterpart of this Agreement to be kept by the Manager at the principal office of the Company and such master counterpart as well as any and all other counterparts executed by any of the parties hereto shall constitute a single agreement.

Section 12.7 Severability. In case any one or more of the provisions contained in this Agreement shall be invalid or unenforceable in any jurisdiction, the validity and enforceability of all remaining provisions contained herein shall not in any way be affected or impaired thereby; and the invalid or unenforceable provisions shall be interpreted and applied so as to produce as near as may be the economic result intended by the Members.

Section 12.8 Governing Law. This Agreement, including its existence, validity, construction and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of laws) to the extent not preempted by applicable Federal law. The Manager and the Members agree to submit to the jurisdiction of the Court of Chancery of the State of Delaware for resolution of any disputes arising under or in connection with this Agreement and that service of process may be effected upon each of them by serving the registered agent for the Company in the State of Delaware as set forth for the Company on the records of the Secretary of State of the State of Delaware.

Section 12.9 Non-Binding Arbitration/Mediation. The foregoing Section 12.8 notwithstanding, the Members and the Manager agree that any disputes relating to, arising under or in connection with this Agreement or the Company generally shall first be submitted to non-binding arbitration or mediation in the State of Missouri, County of St. Louis prior to being submitted to the Delaware Court of Chancery.

Section 12.10 Consents. Any consent or approval to any act or matter required under this Agreement shall be in writing and shall apply only with respect

to the particular act or matter to which such consent or approval is given, and shall not relieve any Member from the obligation to obtain the consent or approval, as applicable; wherever required under this Agreement to any other act or matter.

Section 12.11 Limitation on Liability. The Members shall not be bound by, or be personally liable for, the expenses, liabilities or obligations of the Company, and the liability of each Member shall be limited solely to the amount of its Capital Contribution as provided under Article III.

Section 12.12 Power of Attorney.

(a) Each Member, by its execution hereof, hereby irrevocably makes, constitutes and appoints the Manager as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead to make, execute, sign, acknowledge, swear to, record and register (i) any amendment to this Agreement which has been adopted by the Members and the Manager as provided in Section 12.13 hereof; (ii) all certificates and other instruments deemed advisable by the Manager to carry out the provisions of this Agreement and applicable law to permit the Company to become or to continue as a limited liability company in each jurisdiction where the Company may be doing business; (iii) all instruments that the Manager deems appropriate to reflect a change or modification of this Agreement in accordance with this Agreement; (iv) all conveyances and other instruments or papers deemed advisable by the Manager, including, without limitation, those to effect the dissolution and termination of the Company; (v) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; (vi) all other instruments or

papers which may be required or permitted by law to be filed on behalf of the Company; (vii) any documents which would be required to allow the admission of new members or the withdrawal of existing members; and (viii) the continuation of the Company with the change of Membership.

(b) The foregoing power of attorney:

(i) is coupled with an interest, shall be irrevocable and shall survive the bankruptcy of each Member; and

(ii) may be exercised by the Manager either by signing separately as an attorney-in-fact for each Member or, after listing all of the Members executing an instrument, by a single signature of the Manager acting as attorney-in-fact for all of them.

Section 12.13 Amendment Waiver or Modification. Except as otherwise provided in this Agreement, no amendment, waiver or modification to this Agreement shall be effective without the prior written consent of the Members holding a majority in interest of the Capital Accounts of all Members (or theft designees, if any, appointed pursuant to a valid power of attorney); provided, however, that no amendment, waiver or modification to this Agreement shall be effective with regard to the obligations or compensation of the Manager hereunder with the prior written consent of the Manager. In addition to the rights granted elsewhere in this Agreement to the Manager to amend this Agreement without the consent to the Members, the Manager shall have the right to amend this Agreement without the consent of the Members (i) to reflect a change in the membership of the Company and (ii) to effect any change in the terms of this

Agreement which, in the reasonable judgment of the Manager, does not adversely affect the rights of the Members or which does not increase the obligations of the Members, except as may be otherwise provided under the Act.

IN WITNESS WHEREOF, the Members and the Manager have signed this Agreement as of the day and year first above written.

Manager:	CAPITAL PRIVATE WEALTH MANAGEMENT, LLC, a Delaware limited liability company By: _____ Name: _____ Its: _____
Individual Members:	By: _____ Name: _____
Entity Members:	Entity: _____ By: _____ Name: _____ Its: _____
Members Who Appointed Manager as Attorney-in-Fact	CAPITAL PRIVATE WEALTH MANAGEMENT, LLC, a Delaware limited liability company By: _____ Name: _____ Its: _____

APPENDIX B

DEFINITIONS OF TERMS

"Account Manager" shall mean the Account Managers appointed pursuant to Section 7.1 from time to time.

"Act" shall mean the Delaware Limited Liability Company Act as amended from time to time.

"Agreement" shall mean this Operating Agreement as amended from time to time.

"Audit" shall have the meaning ascribed to it in Section 8.2(a).

"Certificate of Formation" shall mean the Certificate of Formation of CPW International Equities, LLC, as amended from time to time.

"Beneficial Interest" shall have the meaning ascribed to it in Section 4.1.

"Capital Account" shall have the meaning ascribed to it in Section 4.2(a).

"Capital Contribution" shall have the meaning ascribed to it in Section 3.1.

"Code" shall mean Internal Revenue Code of 1986, as amended from time to time, including the corresponding provisions of any successor law.

"Company" shall mean the CPW International Equities, LLC.

"Custodian" shall mean the custodian of the Company appointed by the Manager in its sole discretion, or any successor thereto appointed by the Manager pursuant to Section 1.4 of this Agreement.

"Custodian Agreement" shall mean the Custodian Agreement entered into by and between the Custodian and the Company.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Financial Statements" shall have the meaning ascribed to it in Section 8.2(a).

"Investment Vehicles" shall mean any investment fund in which the Company invests.

"Manager" shall have the meaning ascribed to it in Section 1.3.

"Member(s)" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"Notices" shall have the meaning ascribed to it in Section 12.2.

"Person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, a limited liability company, an unincorporated organization and a government or other department or agency thereof or any other entity.

"Redemption Date" shall mean the date on which any funds are paid by the Company to a redeeming Member pursuant to a duly delivered Redemption Notice.

"Redemption Notice" shall have the meaning ascribed to it in Section 6.1.

"Redemption Value" shall have the meaning ascribed to it in Section 6.4.

"Sub-Adviser Agreement" shall mean the Sub-Adviser Agreement entered into by and between the Manager and the Sub-Adviser.

"Transfer" shall have the meaning ascribed to it in Section 9.1.

"Treasury Regulation" shall mean the applicable provisions of the income tax regulations promulgated under the Code, as amended from time to time, including the corresponding provisions of any succeeding regulations.

"Valuation Date" or "Valuation Dates" shall mean the last business day of each calendar month and any other day which the Manager may, in its sole discretion, fix from time to time.